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PATENT LEGAL STAFF
EASTMAN KODAK COMPANY
343 STATE STREET
ROCHESTER, NY 14650-2201

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AUG 13 2004

In re Application of
Small
Application No. 08/833,106
Filed: June 14, 2000
Attorney Docket No. 74892B/MGB

OFFICE OF PETITIONS

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(a), filed May 28, 2004, to revive the above-identified application. The petition is also being treated under 37 CFR 1.181 (no fee) as a petition to withdraw the holding of abandonment.

The petition is under 37 CFR 1.181 is **granted**.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

A decision by the Board of Patent Appeals and Interferences ("BPAI") was mailed on January 15, 2004, affirming the examiner.

Office records indicated that no papers were received from applicant within the two months following the decision and no claims had been allowed. Therefore, a Notice of Abandonment was mailed on May 6, 2004.

Petitioner contends a Request for Continued Examination and an amendment were timely submitted.

An applicant may file a RCE and submission after a Board decision, but prior to the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. In such a case, the appeal is withdrawn and prosecution is reopened pursuant to 37 CFR 1.114.

The only issue present is: were the RCE and submission timely submitted?

Petitioner has submitted a copy of a return postcard receipt indicating that the RCE and amendment were received on March 15, 2004.¹ Petitioner has supplied a copy of the missing items and provided a showing in compliance with 37 CFR 1.8(b). A review of Office financial records indicates the \$770 RCE fee was charged to a credit card based on a paper received on March 15, 2004.

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

Although the original copy of the RCE and amendment can not be located, the evidence establishes that the documents were timely filed.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Since the petition has been granted under 37 CFR 1.181, the petitioner's request to have the petition considered under 37 CFR 1.137(a) is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, the petition fee has not been charged to petitioner's deposit account.

The file is being forwarded to Technology Center Art Unit 2612 to correct Office records to indicate the application is not abandoned. The file will then be forwarded to the examiner for consideration of the RCE and amendment.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
Petitions Attorney
Office of Petitions